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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-522

CHARLES WENTZ AND V.I.P. ELECTRIC, INC.,
Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 1525,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF IN OPPOSITION FOR INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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The Respondent, International Brotherhood of Electical Workers, respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the Eighth Circuit's judgment in this case.[1] The Eighth Circuit's opinion is printed in an Appendix to the Petition ("App."). The District Court's opinion is printed in a separate Supplemental Appendix to the Petition ("Supp. App.").

QUESTION PRESENTED

Whether an employee injured at the jobsite can re-

[1] While Local No. 1525 is designated as a respondent pursuant to Rule 21(4), no issue involving Local 1525 was before the Court of Appeals.

cover damages from an international union, under Section 9(a) of the National Labor Relations Act (29 U.S.C. §159(a)), where the international union is not his collective bargaining representative; neither authorized, ratified nor even knew of the job conditions which allegedly caused the injury; and otherwise had no connection with the incident.

STATEMENT OF THE CASE

This case involves a claim for damages by Mr. Charles Wentz—an employee of V.I.P. Electric ("V.I.P.") and a member of Local Union No. 1525, IBEW, Omaha, Nebraska—for injuries resulting to him from falling against a live wire on the jobsite. Wentz sued his Local Union and its International Union in the United States District Court for the District of Nebraska alleging that the Unions permitted V.I.P. to use defective equipment which caused Wentz' fall.

The District Court granted a motion for summary judgment in favor of the International following a hearing, and on the basis of depositions, affidavits and briefs. A motion for summary judgment by the Local Union was denied, however, on the ground that an issue of fact existed as to whether the Local's enforcement of the safety provisions in its contract with V.I.P. arbitrarily discriminated between employees based on the identity of the employer for whom they worked (App. 3). Plaintiff's claim against the Local remains to be tried and is not before this Court. The Court of Appeals affirmed the judgment in favor of the International, holding that the record conclusively established as a matter of law that plaintiff has no cause of action against the International (App. 12).

The lower courts relied upon the facts of record showing that the International Union is not the collective bargaining representative of Mr. Wentz nor of any employees of V.I.P. (R. 14, 15, 186, 207-08). Nor is the International Union a party to the collective bargaining agreement between Local 1525 and V.I.P. (App. 10; Supp. App. 14). While the International has encouraged all of its Local Unions to promote the health and safety interests of electrical workers through the collective bargaining process, and has approved Local 1525's agreement [2] containing a safety provision [3], the International "has no connection with the discriminatory or bad faith conduct which allegedly caused the plaintiff Wentz' injuries." (Supp. App. 3.)

"It is clear that the plaintiffs do not claim that any representative of the International actually did anything or was required to do anything with respect to the conditions under which the plaintiff Wentz worked." (Supp. App. 3.) Nor was there any dispute that the International neither authorized, ratified,

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[2] The International's approval of Local 1525's agreement was made in accordance with the general approval procedure contained in the International Constitution (R. 33).

[3] That provision states:

"Article V, Hours—Wage Payments—Apprentices—Working Conditions

"Sec. 13A. The employer shall furnish rubber gloves, protectors, shields, blankets, hard hats and other protective equipment in accordance with safe operating procedure and requirements of any safety laws. Rubber goods must be given a proper test at least once each month. Employees must sign a deduction slip to cover the cost of hard hat issued to him at the start of employment. If hat is not returned, costs will be deducted from his final pay check." (R. 34.)

nor even knew of, any act of Local 1525 which forms the basis of plaintiff's claim against the Local. Wentz never made any safety complaint to any International official or representative, nor did any International official or representative participate in the negotiations or enforcement of the collective bargaining agreement (App. 14).

On the basis of the record, the District Court found that "while the power of the International over the affairs of the Local is considerable, it is no more pervasive than typically has been involved in cases in which it has been held that locals and national or international unions are separate entities. See *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922); *Gray v. International Assoc. of Heat Insulators, Local 51*, 416 F. 2d 313 (C.A. 6th Cir. 1969); *DiGiorgio Fruit Corp. v. NLRB*, 191 F. 2d 642 (C.A. D.C. Cir. 1951)." (Supp. App. 3-4.)

> "The International's showing in support of its motion, which includes the International's constitution and the applicable collective bargain[sic] agreement, establishes that the Local is a separate, albeit dependent, entity, and not an agent of the International. The plaintiff has been unable to offer any showing which creates a factual controversy on this issue; consequently, summary judgment is proper. See *Percival v. General Motors Corp.*, 539 F. 2d 1126 (C.A. 8th Cir. 1976)." (Supp. App. 4.)

Thus, for example, Local Union No. 1525 elects its own officers by secret ballot, including a Local Union President, Business Manager and Financial Secretary. The Local Union President appoints committees and delegates; and the Business Manager appoints stewards

who work under his direction and are subject to his authority. The Financial Secretary and President and Business Manager are paid by Local Union No. 1525 and receive no income or other monies from the International.

The Business Manager of Local Union No. 1525 conducts the day-to-day affairs of the Local Union. His duties include the enforcement of the provisions of the collective bargaining agreement that the Local has with employers and the adjustment of grievances with employers. Local Union No. 1525 has complete control of the negotiation and administration of its collective bargaining agreement. The Negotiating Committee is appointed by the President.

Local Union No. 1525 has been recognized by V.I.P. Electric, Inc. as the exclusive collective bargaining representative for the employees in its operations. The International is not and has not been a party to, or a signatory of, these agreements. Local No. 1525 has, and has had, complete control of the administration of these agreements, including the grievance-arbitration procedures contained therein.

Local Union No. 1525 maintains its own accounts, property and other assets in Douglas County, Nebraska. The Financial Secretary of the Local Union keeps the books and records in connection with the receipts and expenditures of the Local Union. Local Union No. 1525 has complete control over its business affairs.

The Local Union admits to membership qualified journeymen and apprentices. The International does not participate in any manner in the admission of ap-

plicants to membership in the Local Union. The Local Union sets its own rate of dues. (R. 15-16, 12-14.)

REASONS FOR DENYING THE WRIT

A. None of the Reasons Supporting Review Set Forth in Rule 19 is Present.

The petition fails to demonstrate, or even to argue, that any of the reasons in support of review set forth in Rule 19 are present. The Court of Appeals relied upon a consistent line of authority, in this Court, in its own Circuit, and other Circuits (App. 13), and applied the "ordinary rules of agency" to the relationship between the International and Local 1525 (App. 14), to hold that the record conclusively establishes as a matter of law that plaintiffs have no cause of action against the International (App. 12).

There is no conflict between the Court of Appeals' decision and the decision of another court of appeals: there is no question of federal law which has not been settled by this Court; and there is no conflict with applicable decisions of this Court. See Rule 19(b), Rules of Supreme Court.

B. The Decisions of the Courts Below—That Under the Facts of Record, There is Absolutely No Basis for a Finding of an Agency Relationship Between the International and Local 1525—Do Not Warrant Review By This Court.

Petitioner would have this Court grant review to consider and reverse the decisions of both lower courts that no evidentiary basis exists for a finding of agency.

Those courts had before them the IBEW Constitution; the collective bargaining agreement between Local 1525 and V.I.P.; the communications issued by the International to its Locals on the subject of safety; and evidence specifically showing the nature of the

relationship between the International and Local 1525. On the basis of that full record showing absolutely no connection between the International and the working conditions at the V.I.P. jobsite allegedly giving rise to Petitioner's injury, the courts found no agency relationship. (App. 14.) Certiorari is not warranted to review the factual record a third time.

While the petition selectively asserts "facts" relating to the powers of the International Union, it does not pretend to argue that the findings below are clearly erroneous, or even erroneous. Moreover, the petition misstates many of the "facts" it asserts. Thus, for example, it is grossly inaccurate for it to state that "the International must approve everything the Local does" (Pet. 8). The Local is autonomous in many respects, including the negotiation and administration of its own contracts. (Supp. App. 3-4; R. 12-16.) The International does *not* "approve" Local Union "officers", who are elected by the Local's members (Pet. 5). (R. 13, 15.) And, as regards safety matters specifically, the International does *not* "set up the standards of safety which the Local Union shall follow", "make investigations of accidents", or engage in "a highly comprehensive safety provision review and enforcement procedure and maintain close control over the Local" (Pet. 5, 7). It *encourages* locals to promote safety on the job and *recommends* safety standards for adoption. (Supp. App. 3; R. 27, 31, 35-37.)

The District Court found, generally, that the power of the International "is no more pervasive than typically has been involved in cases in which it has been held that locals and national or international unions are separate entities." (Supp. App. 3-4.) This is clearly correct. This Court's leading decision in *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922),

finding no agency relationship [4], involved a Union which the National Labor Relations Board—an agency cognizant of the operations of labor organizations—has stated "regulates the affairs of its locals more closely" than any international union. Of relevance, that statement concerning the United Mine Workers was made in a case involving Respondent here, the Board holding after a careful review of the Constitution of the IBEW and its relationship to its Locals, that the Locals are not agents of the International. *International Brotherhood of Electrical Workers (Franklin Electric Construction Co.)*, 121 NLRB 143 (1958).

C. There is No Basis in Law or Policy for Departing From the Firmly Established Rule in Federal Labor Relations That an International Union Such As the IBEW Is Not Liable for Acts of a Local Absent Participation or Ratification.

At one point in the petition (pp. 6-7), Wentz suggests that *United Mine Workers v. Coronado,* 259 U.S. 344 (1922) (and the long line of authority emanating therefrom) be overruled. This is a suggestion that the liability of international unions such as Respondent for acts of their local unions should no longer be based on the ordinary rules of agency, but that instead, international unions should be made vicariously liable for the unlawful acts (or omissions) of the multitude of officers, representatives, stewards and employees of the hundreds of affiliated local unions, however far removed such acts may be from the International's functions, policies, presence or knowledge.

[4] Petitioner's effort to distinguish *Coronado* (Pet. 8) is unavailing. In *Coronado,* this Court found no agency relationship, by ratification, notwithstanding remarks made by the international president which appeared to condone an unlawful work stoppage by the local union. 259 U.S. at 393-94. In the instant case, the lower courts found there was no participation by the International in the incident leading to the accident, no connection with the conduct which allegedly caused Wentz' injuries, and not even participation in the negotiation or enforcement of the Local's collective bargaining agreement.

Such a departure from the firmly established rule governing this issue finds no support in either law or policy. As the Court stated in *Coronado:*

> "A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are ultra vires the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency, which the constitutions of the two bodies settle conclusively. If the International body had interfered, or if it had assumed the liability by ratification, different questions would have arisen." 259 U.S. at 395.

There is no more legal basis for a vicarious standard of international union liability today than when *Coronado* was decided. Indeed, enactment of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 401, *et. seq.*), demonstrates congressional desire to maintain the legal distinction between international and local unions and its intent to preserve for local union members freedom from the kind of domination and control by their internationals to which the petition alludes.

Since *Coronado*, the federal courts and the National Labor Relations Board have applied the ordinary rule of agency in cases brought against labor organizations under various federal labor statutes. *United Construction Workers v. Haislip Baking Co.,* 223 F.2d 872 (4th Cir. 1955); *DiGiorgio Fruit Corporation v. NLRB,*

191 F.2d 642 (D.C. Cir. 1951), *cert. den.* 342 U.S. 869; *Morgan Drive-Away, Inc. v. International Brotherhood of Teamsters,* 268 F.2d 871 (7th Cir. 1959), *cert. den.* 361 U.S. 896; *Hansen v. Hutcheson,* 217 F.2d 171 (7th Cir. 1954); *Gray v. International Association, Etc., et al.,* 416 F.2d 313 (6th Cir. 1969); *NLRB v. Local 1016, Carpenters,* 273 F.2d 686 (2nd Cir. 1960); *Bailey v. Transportation-Communication Employees Union,* 69 LRRM 2723 (N.D. Miss. 1968); *Dominguez v. National Air Lines,* 63 LRRM 2459 (S.D. N.Y. 1966); *Farnsworth & Chambers Co. v. Sheet Metal Workers International Association Local* 49, 125 F. Supp. 830, 834 (D. N.M. 1954); *Axel Newman Heating & Plumbing Co. v. Sheet Metal Workers Local 76,* 37 LRRM 2038 (D. Minn. 1955); *International Brotherhood of Electrical Workers (Franklin Electric Construction Co.),* 121 NLRB 143 (1958); *Local P-575, Amalgamated Meat Cutters (Iowa Beef Packers, Inc.),* 188 NLRB 5 (1971).

Finally, it is submitted that important policy considerations underlie the necessity for preserving the present law of agency as it relates to international-local union relationships. In *United Mine Workers v. Gibbs,* 383 U.S. 715, 738-39, the Court set forth the proposition that national labor policy—whether in a Norris LaGuardia or NLRA context—encourages international unions to conduct normal union functions even in explosive situations. In order that parent organizations would not be "chilled" in exercising their restraining and mediating influences, the Court recognized that "it would be inconsistent with the fabric of national labor policy to infer ratification" of a local union's activities from the strike-mediating efforts of its international or "from the fact that it carried on some normal union functions such as provision of strike relief". The Court

further recognized that this beneficial and salutary international presence would be unlikely if the parent union, in order to avoid liability, were required to repudiate or disavow the acts of its local.

Petitioner argues here that the International should be liable merely because, in the exercise of its normal union functions, it has become involved in a general way in attempting to promote the safety of electrical workers at jobsites. The record below shows that the International has communicated with its Local Unions recommending the inclusion of safety provisions in collective bargaining agreements and otherwise encouraging the advancement of jobsite safety through the collective bargaining process. If Petitioner were to have his way, and the International were to be held liable for an injury resulting from allegedly unsafe conditions at a particular jobsite over which the International had neither control nor knowledge, one of two things could result. Either, international unions would withdraw completely from attempting to exercise a salutary influence in support of the national policy promoting the health and safety of employees, or international unions would be required substantially to increase their staffs so as to police jobsites on a day-to-day basis, notwithstanding the presence of local union stewards and other representatives who are the exclusive collective bargaining representatives under the NLRA. Clearly, neither result is desirable.

From the record below it is obvious that Petitioner included in his suit the International Union—with whose representatives he had never even spoken (App. 14; R. 82-83)—solely to obtain a windfall from an entity he assumed to be more capable of satisfying a

judgment.[5] His effort to have this Court review the uniform evidentiary findings of the courts below and/or to overrule firmly established principles rooted in law and policy should be rejected.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[5] Contrary to the statement in the petition, however, there is no evidence to show that Local 1525 is insolvent or otherwise unable to satisfy a judgment.